

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

ATS TREE SERVICES, LLC,

Plaintiff,

v.

FEDERAL TRADE COMMISSION; LINA M. KHAN, in her official capacity as Chair of the Federal Trade Commission; and REBECCA KELLY SLAUGHTER, ALVARO BEDOYA, ANDREW N. FERGUSON, and MELISSA HOLYOAK, in their official capacities as Commissioners of the FTC,

Defendants.

Case No.: 2:24-cv-1743-KBH

NOTICE OF SUPPLEMENTAL AUTHORITY

On July 15, 2024, the Third Circuit affirmed the district court’s denial of a preliminary injunction in *Delaware State Sportsmen’s Ass’n v. Delaware Department of Homeland Security*, Nos. 23-1633, 23-1634, 23-1641 (3d Cir. July 15, 2024). As relevant here, the court of appeals reaffirmed that “a preliminary injunction ‘is an extraordinary remedy that should be granted only in limited circumstances,’” consistent with traditional equitable principles. Slip op. at 13 (brackets omitted) (quoting *Mallet & Co. v. Lacayo*, 16 F.4th 364, 391 (3d Cir. 2021)); *see id.* at 10-12. The Third Circuit also recognized that “[p]reliminary injunctions raise further problems,” including “limit[ing] adversarial testing,” requiring courts to “forecast[] the merits,” and, in doing so, creating a risk of “prejudg[ment].” *Id.* at 12-13. Accordingly, the court of appeals held that “the threat of irreparable harm does not automatically trigger a preliminary injunction.” *Id.* at 15. Rather, it is “often, perhaps usually, the wiser course” to “withhold this extraordinary remedy if a

plaintiff's alleged injury does not threaten to moot the case." *Id.* at 16; *see also id.* at 23 ("[T]he challengers offered no evidence that without a preliminary injunction, the District Court will be unable to decide the case or give them meaningful relief. Thus, the court properly found no irreparable harm.").

In the instant action, Plaintiff has not established a threat of imminent, irreparable harm, as explained in Defendants' brief in opposition to Plaintiff's motion for preliminary injunctive relief. *See* Defs.' Br. in Opp'n to Pl.'s Mot to Stay Effective Date & for Prelim. Inj. at 29-33, ECF No. 22. At a minimum, Plaintiff has not demonstrated (or even argued) that this case will become moot absent a preliminary injunction. The Third Circuit's decision in *Delaware State Sportsmen's Ass'n* thus confirms that this Court should deny Plaintiff's motion for preliminary injunctive relief. A copy of the decision is attached.

Dated: July 16, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing document has been filed electronically and is available for viewing and downloading from the ECF system.

/s/ Taisa M. Goodnature

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